



WA 2302

10-14-99

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*NOT  
correspondence*

October 14, 1999

**VIA FACSIMILE (Original via Regular Mail)**

Mr. Jamie Sikorski  
Manager, RCRA Compliance Unit  
U.S. Environmental Protection Agency  
Region 10 (WCM-126)  
1200 Sixth Avenue  
Seattle, WA 98101

RECEIVED

Oct 15 1999

OFFICE OF WASTE  
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Re: **October 8, 1999 Notice of Violation Letter  
Administrative Order on Consent for Corrective Action ("Order")  
Under the Resource Conservation and Recovery Act ("RCRA")  
Docket No. 1091-11-20-3008(h)  
Former Rhone-Poulenc East Marginal Way Facility  
Container Properties L.L.C./Rhodia, Inc.**

Dear Mr. Sikorski:

On behalf of Container Properties, L.L.C., and Rhodia, Inc., RCI Environmental, Inc. ("RCIE") acknowledges receipt of the U.S. Environmental Protection Agency (EPA) Notice of Violation ("NOV") letter dated October 8, 1999. The NOV requires that, within fifteen (15) days of receipt of the NOV, Container Properties, L.L.C., and Rhodia, Inc., respond to the NOV indicating what measures have been taken to prevent future noncompliance.

We believe that this situation is more one of a misunderstanding of notification requirements associated with the performance of voluntary interim actions than a violation of the Order. In a July 15, 1999 letter from Christy Brown (EPA) to Pete Wold (RCIE), EPA encouraged the voluntary measures which are the cause of concern in the NOV, warned that the voluntary measures were to be performed at the Respondent's risk, and requested that we include information regarding these actions in the monthly progress reports. Because of the language in the letter, we did not believe that the written notice requirements in the Order applied to the implementation of the voluntary interim measures.



Mr. Jamie Sikorski  
October 14, 1999  
Page 2

Furthermore, Section XI of the Order titled "Sampling and Data/Document Availability" pertains to sampling, testing or generation of other data with respect to implementation of the Order. More specifically, the notification requirements of Paragraph 11.2 pertains to activities (e.g. drilling, equipment installation, etc.) associated with the taking and testing of samples. The voluntary interim measure work we have performed is not of that nature, and it was our belief that the notification requirements of Paragraph 11.2 did not apply in this case.

Finally, as the NOV states, we did contact Kim Ogle of the EPA via electronic mail on October 6, 1999, regarding our voluntary interim measures work. We did this immediately after being informed of the EPA's request for written notice of the voluntary interim measures. In fact, prior to EPA's request for written notice of voluntary interim measures, on October 4, 1999, Christy Brown was contacted via electronic mail regarding this work. See attached copies of October 4, 1999 and October 6, 1999 e-mails. We believed that the electronic mail messages to both Ms. Brown and Ms. Ogle was written notification. However, the NOV states that the EPA "does not have written notification." Based on the NOV, we will assume in the future that electronic mail notification does not constitute "written notice" as used in the Order.

Therefore, to avoid future noncompliance, we will comply with the notification requirements of Paragraph 11.2 for all future voluntary interim measure work, and will do so by written (non-electronic mail) notification unless otherwise advised by the EPA. The measures we have taken to ensure that this situation does not arise again include confirmation with our project team that EPA will be provided the ten (10) day notification for any field work, whether it is voluntary interim measure work or work being performed pursuant to the Order.

Based upon the circumstances described above, we respectfully request that the EPA rescind the October 8, 1999, Notice of Violation.



Mr. Jamie Sikorski  
October 14, 1999  
Page 3

Should you have any questions, please don't hesitate to contact me at (253) 863-5300.

Very truly yours,

Pete Wold  
Project Coordinator

cc: Mackey Smith  
Donald J. Verfurth, Esq.  
Jennifer G. MacDonald, Esq.  
Paul Linskey  
Byung Meang

Subj: **Former Rhone-Poulenc Site - Voluntary Interim Measures**

Date: 10/4/99 4:22:27 PM Pacific Daylight Time

From: PWold1

To: Brown.Christy@EPA.gov

CC: acarey@agitech.com, fuentes.rene@epamail.epa.gov

CC: ogle.kimberly@epamail.epa.gov

CC: rsadowski@agitech.com, sikorski.jamie@epa.gov

CC: msmith@agitech.com, verfurth@cameylaw.com

CC: pbarry@agitech.com

Christy,

This e-mail is to inform you that we have commenced interim measure work as a voluntary action (installation of six horizontal vapor extraction wells) at the subject site. The system to be installed is consistent with that submitted to EPA in the Revised Interim Measure Work Plan on June 14, 1999. We understand that we are proceeding with this voluntary action at our own risk.

As requested in your July 15, 1999, letter response to our Interim Measure Work Plan submittal, we will include information regarding these actions in our monthly progress reports.

Should you have any questions, please don't hesitate to call me at (253) 863-5300 or (206) 949-5045.

Best Regards,

Pete Wold

Subj: **Re: Former Rhone-Poulenc Site - Voluntary Interim Measures**

Date: 10/5/99 8:47:54 AM Pacific Daylight Time

From: Ogle.Kimberly@epamail.epa.gov

To: PWold1@aol.com

CC: acarey@agitech.com, Brown.Christy@epamail.epa.gov, Sikorski.Jamie@epamail.epa.gov, msmith@agitech.com, pbarry@agitech.com, Fuentes.Rene@epamail.epa.gov, rsadowski@agitech.com, verfurth@cameylaw.com

Pete: this is Kim:

Under the order, you are to inform epa in writing—10 days prior to commencing any field activities I and possible rene, would like to come out and observe this activity. From your message, it sounds like the field crew may already be mobilized....

Can you provide some dates? We need to adjust our calanders.

Thanks!

Kim

PWold1@aol.co|

m |

10/04/1999 |

04:22 PM |

To: Christy Brown/R10/USEPA/US@EPA |

cc: acarey@agitech.com, Rene |

Fuentes/R10/USEPA/US@EPA, Kimberly |

Ogle/R10/USEPA/US@EPA, |

rsadowski@agitech.com, Jamie |

Sikorski/R10/USEPA/US@EPA, |

msmith@agitech.com, verfurth@cameylaw.com, |

pbarry@agitech.com |

Subject: Former Rhone-Poulenc Site - |

Voluntary Interim Measures |

Christy,

This e-mail is to inform you that we have commenced interim measure work as a voluntary action (installation of six horizontal vapor extraction wells) at the subject site. The system to be installed is consistent with that submitted to EPA in the Revised Interim Measure Work Plan on June 14, 1999.

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As requested in your July 15, 1999, letter response to our Interim Measure Work Plan submittal, we will include information regarding these actions in our monthly progress reports.

Should you have any questions, please don't hesitate to call me at (253) 863-5300 or (206) 949-5045.

Best Regards,

Pete Wold

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----- Headers -----

Return-Path: <Ogle.Kimberly@epamail.epa.gov>

Received: from rly-zc01.mx.aol.com (rly-zc01.mail.aol.com [172.31.33.1]) by air-zc02.mail.aol.com (vx) with ESMTP; Tue, 05 Oct 1999 11:47:54 -0400

Received: from merlin.rtpnc.epa.gov (merlin.rtpnc.epa.gov [134.67.208.148]) by rly-zc01.mx.aol.com (v61.13) with ESMTP; Tue, 05 Oct 1999 11:47:35 -0400

Received: from myrtle.rtpnc.epa.gov by epamail.epa.gov (PMDF V5.1-12 #26439) with ESMTP id <0FJ40054GYX7BN@epamail.epa.gov> for PWold1@aol.com; Tue, 5 Oct 1999 11:28:27 -0400 (EDT)

Received: from EPAHUB2.RTP.EPA.GOV by epamail.epa.gov (PMDF V5.1-12 #26438) with SMTP id <0FJ40074AYSOQX@epamail.epa.gov> for PWold1@aol.com; Tue, 05 Oct 1999 11:24:41 -0400 (EDT)

Received: by EPAHUB2.RTP.EPA.GOV(Lotus SMTP MTA v4.6.3 hotfix 1 (767.1 12-15-1998)) id 85256801.0054270A ; Tue, 05 Oct 1999 11:19:10 -0400

Date: Tue, 05 Oct 1999 08:25:25 -0700

From: Ogle.Kimberly@epamail.epa.gov

Subject: Re: Former Rhone-Poulenc Site - Voluntary Interim Measures

To: PWold1@aol.com

Cc: acarey@agitech.com, Brown.Christy@epamail.epa.gov,

Sikorski.Jamie@epamail.epa.gov, msmith@agitech.com, pbary@agitech.com,

Fuentes.Rene@epamail.epa.gov, rsadowski@agitech.com,

verfurth@cameylaw.com

Message-id: <85256801.00541FB8.00@EPAHUB2.RTP.EPA.GOV>

MIME-version: 1.0

Content-type: text/plain; charset=us-ascii

Content-disposition: inline

X-Lotus-FromDomain: EPA

**Subj: Former Rhone-Poulenc Site - Voluntary Interim Measure Work**

**Date: 10/6/99 3:49:56 AM Pacific Daylight Time**

**From: PWold1**

**To: ogle.kimberly@epamail.epa.gov**

**CC: bailey.marcia@epa.gov, pbarry@agitech.com**

**CC: Brown.Christy@EPA.gov, acarey@agitech.com**

**CC: fuentes.rene@epamail.epa.gov**

**CC: macdonald.jennifer@epamail.epa.gov**

**CC: rsadowski@agitech.com, sikorski.jamie@epa.gov**

**CC: msmith@agitech.com, verfurth@cameylaw.com**

Kim,

Thanks for your e-mail yesterday regarding the voluntary interim measure work at the subject site. I apologize for not providing 10-day written notice prior to commencing the field work. I mistakenly interpreted from Christy's July 15, 1999 letter that because this is a voluntary action, I simply needed to keep EPA up to date on our voluntary actions in our monthly progress reports.

We would love to have you and Rene, and any other interested parties from EPA, come out to observe the installation of the horizontal wells for the vapor extraction system.

We began installation of the wells Monday this week. As of close of business yesterday, we had the installation of two of the six horizontal wells completed. We anticipate that horizontal well installation will be complete by the end of this week and that well development will occur next week.

We believe the horizontal well system to be an innovative technology and welcome you to observe its installation. Because I'm on the East Coast this week, to arrange a tour please call Alan Carey at AGI at (425) 453-8383. He, or another AGI representative can meet you onsite at any time that is convenient for you. If you want to discuss this further with me, you can reach me on my cell phone at (206) 949-5045.

Best regards,

Pete Wold

Project Coordinator